

SECOND REGULAR SESSION

# SENATE JOINT RESOLUTION NO. 38

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GROSS.

Read 1st time January 12, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4400S.011

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### JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article IV of the Constitution of Missouri, adding thereto one new section relating to taxing tobacco products.

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*Be it resolved by the Senate, the House of Representatives concurring therein:*

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2006, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to article IV of the Constitution of the state of Missouri:

Section A. Article IV, Constitution of Missouri, is amended by adding thereto one new section, to be known as section 37(b), to read as follows:

**Section 37(b). 1. For the sole and exclusive purpose of providing additional moneys to be expended and used only for tobacco use education, prevention, and cessation programs and initiatives, and the treatment of chronic diseases and medical conditions, including tobacco-related illnesses, on and after January 1, 2007, a tax equal to two cents per cigarette and twenty percent of the manufacturer's invoice price before discounts and deals on other tobacco products shall be levied and imposed upon the sale of cigarettes and other tobacco products. The tax imposed by this section shall be in addition to other taxes imposed by law on the sale of cigarettes and other tobacco products and shall be collected in the same manner and at the same time as the taxes imposed by law upon the sale of cigarettes and other tobacco products.**

**2. As used in this section, the following terms mean:**

**(1) "Chronic Disease Management Account", the account created**

16 by subdivision (2) of subsection 3 of this section;

17 (2) "Cigar", any roll for smoking, except cigarettes, made chiefly  
18 of tobacco or any tobacco substitute;

19 (3) "Cigarette", an item manufactured of tobacco or any tobacco  
20 substitute, wrapped in paper or any paper substitute, weighing not  
21 more than three pounds per one thousand cigarettes, and commonly  
22 classified, labeled, or advertised as a cigarette;

23 (4) "Department of health and senior services", the executive  
24 department established by chapter 192, RSMo, or any successor  
25 department or agency;

26 (5) "Federal poverty guidelines", the federal poverty guidelines  
27 established pursuant to 42 U.S.C. section 9902(2), as amended, or any  
28 successor federal poverty guidelines;

29 (6) "Healthy Future Trust Fund", the fund created by subsection  
30 3 of this section;

31 (7) "Manufacturer's invoice price", the original net invoice price  
32 for which a manufacturer sells other tobacco products to a distributor,  
33 wholesaler, or first seller in the state as shown by the manufacturer's  
34 original invoice;

35 (8) "Missouri Medicaid beneficiary", an individual who receives  
36 medical assistance under the Missouri Medicaid program;

37 (9) "Missouri Medicaid program", the medical assistance program  
38 administered by the state of Missouri under Title XIX of the Social  
39 Security Act, as amended, and chapter 208, RSMo, or any successor to  
40 the program;

41 (10) "Net proceeds", the total moneys collected and deposited in  
42 the Healthy Future Trust Fund pursuant to the tax imposed by this  
43 section minus the amounts transferred from or paid out of the Healthy  
44 Future Trust Fund pursuant to subsection 5 of this section;

45 (11) "Other tobacco products", cigarette papers, clove cigarettes,  
46 cigars, smokeless tobacco, smoking tobacco, or other forms of tobacco  
47 products or products made with a tobacco substitute containing  
48 nicotine;

49 (12) "Outpatient ancillary services", outpatient laboratory and  
50 medical imaging services necessary for primary and specialist  
51 physicians to provide diagnostic and therapeutic services to their  
52 patients;

53           (13) "Physician", an individual with a valid and current license  
54 to practice medicine and a valid and current Missouri Medicaid  
55 participation agreement;

56           (14) "Qualifying medical condition", a medical condition or  
57 chronic disease determined by the department of social services to be  
58 among the most prevalent medical conditions or chronic diseases in the  
59 population of Missouri Medicaid beneficiaries, including but not  
60 limited to medical conditions or chronic diseases that are caused or  
61 exacerbated by secondhand smoke or the use of cigarettes or other  
62 tobacco products;

63           (15) "Smokeless tobacco", chewing tobacco, including but not  
64 limited to twist, moist plug, loose leaf and firm plug, and all types of  
65 snuff, including but not limited to moist and dry;

66           (16) "Tobacco Use Prevention, Education, and Cessation Account",  
67 the account created by subdivision (1) of subsection 3 of this section;

68           (17) "Uninsured Missourian", a Missouri resident and United  
69 States citizen who does not have health care coverage through any  
70 private insurer, employer-sponsored self-insured plan, government  
71 health care program such as Medicaid, Medicare, or similar programs,  
72 or any other source;

73           3. "The Healthy Future Trust Fund" is hereby created within the  
74 state treasury. The following accounts are hereby created within the  
75 Healthy Future Trust Fund:

76           (1) Tobacco Use Prevention, Education, and Cessation Account;  
77 and

78           (2) Chronic Disease Management Account.

79           4. Beginning January 1, 2007, the state treasurer without  
80 legislative action shall credit to and place in the Healthy Future Trust  
81 Fund all moneys collected as a result of the tax imposed by this section  
82 as said moneys are received. All of the moneys from the tax imposed  
83 by this section shall be kept separate from the general revenue fund as  
84 well as any other funds or accounts in the state treasury and shall be  
85 credited to and placed only in the Healthy Future Trust Fund and the  
86 accounts created within the Healthy Future Trust Fund. Any moneys  
87 credited to and placed in the Healthy Future Trust Fund and any  
88 account created by this section shall be appropriated and used only for  
89 a purpose or an initiative authorized by this section and shall not be

90 subject to the provisions of section 33.080, RSMo. The unexpended  
91 balances of such moneys shall remain in the Healthy Future Trust Fund  
92 and in the particular account in which the moneys are placed, and such  
93 balances shall not revert to the general revenue fund. All interest  
94 which accrues upon the moneys in any account within the Healthy  
95 Future Trust Fund shall be added to such account and shall not be  
96 credited to the general revenue fund. Except as otherwise provided in  
97 this section, generally applicable laws concerning use of public funds  
98 shall apply to the Healthy Future Trust Fund.

99       5. (1) The actual costs of collecting the tax imposed by this  
100 section shall be paid from the moneys in the Healthy Future Trust Fund  
101 as may be provided by law, not to exceed four percent of the total  
102 moneys collected;

103       (2) The department of revenue shall refund moneys overpaid or  
104 erroneously paid pursuant to this section as may be provided by law;

105       (3) Each month, the director of the department of revenue shall  
106 determine whether the tax imposed by this section has caused a  
107 reduction in the amount of moneys collected and deposited into the fair  
108 share fund, the health initiatives fund, or the state school moneys fund  
109 under chapter 149, RSMo. If a reduction in the amount of moneys  
110 collected and deposited into any of those funds under chapter 149,  
111 RSMo, has been caused by the tax imposed by this section, an amount  
112 equal to the amount of moneys that were not collected and deposited  
113 into that fund or funds because of the tax imposed by this section shall  
114 be transferred from the Healthy Future Trust Fund to the appropriate  
115 fund or funds. The aggregate amount transferred to the fair share  
116 fund, the health initiatives fund, and the state school moneys fund from  
117 the Healthy Future Trust Fund for any month shall not exceed three  
118 percent of the total moneys collected pursuant to this section during  
119 that same month.

120       6. The net proceeds of the tax imposed by this section shall be  
121 monthly apportioned, distributed, and deposited as follows:

122       (1) Thirty-five percent of the net proceeds shall be credited to  
123 and placed in the Tobacco Use Prevention, Education, and Cessation  
124 Account; and

125       (2) Sixty-five percent of the net proceeds shall be credited to and  
126 placed in the Chronic Disease Management Account.

127           **7. Moneys deposited in the Tobacco Use Prevention, Education,**  
128 **and Cessation Account shall be appropriated by the general assembly**  
129 **to the department of health and senior services, the department of**  
130 **public safety, and the department of mental health for the sole purpose**  
131 **of funding a comprehensive statewide tobacco control program that is**  
132 **consistent with the Center for Disease Control and Prevention's, or its**  
133 **successor agency's, best practices and guidelines for tobacco control**  
134 **programs and is determined by the department of health and senior**  
135 **services to be effective to prevent and reduce tobacco use, reduce the**  
136 **public's exposure to secondhand smoke, and identify and eliminate**  
137 **disparities related to tobacco use and its effects among different**  
138 **population groups. The components of the comprehensive statewide**  
139 **tobacco control program shall include but not be limited to: community**  
140 **programs to reduce tobacco use, chronic disease programs to reduce**  
141 **the burden of tobacco-related diseases, school programs, enforcement**  
142 **of existing policies, statewide programs, counter-marketing programs,**  
143 **cessation programs, surveillance and evaluation, and administration**  
144 **and management. The general assembly may also, as part of the**  
145 **cessation program component of the statewide tobacco control**  
146 **program, appropriate funds in the Tobacco Use Prevention, Education,**  
147 **and Cessation Account to the department of social services for tobacco**  
148 **use cessation programs for Missouri Medicaid beneficiaries, provided**  
149 **that no more than ten percent of the moneys in the Tobacco Use**  
150 **Prevention, Education, and Cessation Account shall be appropriated for**  
151 **such programs.**

152           **(1) To ensure effective funding allocations of the moneys in the**  
153 **Tobacco Use Prevention, Education, and Cessation Account within the**  
154 **best practices and guidelines of the Center for Disease Control and**  
155 **Prevention or its successor agency, at least fifteen percent of those**  
156 **moneys shall be appropriated for mass media public education and**  
157 **counter-marketing programs, at least fifteen percent of those moneys**  
158 **shall be appropriated for community programs to reduce tobacco use,**  
159 **at least five percent of those moneys shall be appropriated for**  
160 **surveillance and evaluation relating to all expenditures and uses of the**  
161 **funds, and at least fifteen percent but no more than thirty percent of**  
162 **those moneys shall be appropriated for cessation programs including**  
163 **any funds appropriated for tobacco use cessation programs for Missouri**

164 Medicaid beneficiaries.

165           (2) The department of health and senior services shall  
166 promulgate reasonable rules pursuant to notice and comment  
167 procedures provided by law to implement this subsection, including  
168 rules to determine the overall effectiveness of the statewide  
169 comprehensive tobacco control program and its individual components,  
170 to establish the eligibility of providers, and to distribute the moneys  
171 that are appropriated pursuant to this section for supplemental  
172 payments to certain service providers for uncompensated smoking  
173 cessation programs.

174           (3) An oversight committee whose members shall be appointed  
175 by the governor with the advice and consent of the senate, and whose  
176 number of members shall be provided for by law, is hereby created to  
177 assist the department of health and senior services, the department of  
178 public safety, and the department of mental health in developing,  
179 implementing, and maintaining a strategic plan, in monitoring the use  
180 of funds, and in assessing the efficacy of programs funded through the  
181 Tobacco Use Prevention, Education, and Cessation Account. The  
182 members of the oversight committee shall be persons with experience  
183 and expertise regarding public health, tobacco control policies and  
184 programs, public education and counter-marketing, and program  
185 oversight and evaluations. No member of the oversight committee shall  
186 serve as a director or employee of any organization that receives  
187 funding from the Tobacco Use Prevention, Education, and Cessation  
188 Account. In addition, no member of the oversight committee shall,  
189 during the member's tenure on the committee or for three years before  
190 joining the committee, receive any salary, grants, or other payments or  
191 support from any business that manufactures, distributes, markets, or  
192 sells cigarettes or other tobacco products or serve as a director,  
193 employee, or consultant of any organization that receives grants or  
194 contributions from any such business or that provides legal, lobbying,  
195 public relations, marketing, or advertising services to any such  
196 business. Each member of the oversight committee shall also agree not  
197 to enter into any such financial or business relationships with the  
198 tobacco industry for a period of two years after that member's tenure  
199 on the oversight committee ends. The oversight committee shall  
200 provide annually a publicly available report on tobacco use and its

201 related harms and costs in the state, the allocation of the Tobacco Use  
202 Prevention, Education, and Cessation Account funds, and related  
203 surveillance and evaluation findings to the general assembly and the  
204 governor.

205       8. Moneys deposited in the Chronic Disease Management Account  
206 shall be appropriated by the general assembly to the department of  
207 social services solely to provide funding for health care access cards  
208 for uninsured Missourians and the costs of administering such  
209 program. The health care access cards shall be debit cards or similar  
210 payment mechanisms authorized by department of social services rule.  
211 To be eligible for a health care access card, an individual must be an  
212 uninsured Missourian with an annual household income that is two  
213 hundred percent or less of the federal poverty guidelines and must  
214 have one or more qualifying medical conditions. The health care access  
215 card shall be used to make payments only for outpatient physician,  
216 outpatient pharmacy, and outpatient ancillary services rendered as a  
217 result of the uninsured Missourian's qualifying medical  
218 conditions. Payments for services rendered to uninsured Missourians  
219 and paid for with the health care access cards created by this  
220 subsection shall not exceed the amount that would be paid for the same  
221 services under the Missouri Medicaid program.

222       (1) Before the beginning of each state fiscal year, the department  
223 of social services shall administer an annual registration period when  
224 uninsured Missourians with qualifying medical conditions shall be  
225 entitled to demonstrate their eligibility to receive health care access  
226 cards and during which the department shall verify that uninsured  
227 Missourians who have previously registered are still eligible to receive  
228 health care access cards. The department of social services annually  
229 shall credit an amount, to be determined by department rule, to the  
230 health care access card of each uninsured Missourian who has  
231 registered and is eligible for the upcoming fiscal year. The department  
232 of social services shall consider the available funding and the number  
233 of eligible registrants in determining the amount to be credited to the  
234 health care access cards, and may increase or decrease the amount  
235 credited to individual health care access cards based on the estimated  
236 annual costs of medical treatment for the specific qualifying medical  
237 condition or conditions of those individuals. In determining the

238 amounts to be credited to the health care access cards, the department  
239 of social services shall apply a preference in favor of medical  
240 conditions or chronic diseases that are caused or exacerbated by  
241 tobacco use or secondhand smoke. If at the end of any fiscal year the  
242 health care access card of any uninsured Missourian has an unused  
243 balance, that balance shall be available to be used in the next fiscal  
244 year. If any uninsured Missourian who was previously eligible for a  
245 health care access card ceases to be eligible, the balance on that  
246 individual's health care access card shall still be available for the  
247 individual to use for eligible expenses, but no new funds shall be  
248 credited to that individual's health care access card while the  
249 individual remains ineligible. Upon the death of any uninsured  
250 Missourian with a health care access card with an unused balance, that  
251 balance shall be used to pay any expenses incurred by the uninsured  
252 Missourian prior to death that could be paid for under this subsection  
253 and the remainder shall revert to the Chronic Disease Management  
254 Account.

255       (2) The department of social services shall promulgate rules to  
256 implement this subsection, pursuant to notice and comment procedures  
257 provided by law, including a rule identifying qualifying medical  
258 conditions. From time to time but at least every three years, the  
259 department of social services shall review the medical conditions and  
260 chronic diseases within the population of Missouri Medicaid  
261 beneficiaries and promulgate any necessary revisions to its rule  
262 identifying qualifying medical conditions.

263       (3) As permitted by federal law, the department of social services  
264 may seek approval from the federal government and take all other  
265 necessary steps to qualify the payments described in this subsection  
266 as eligible for federal financial participation payments through the  
267 disease management program for Missouri Medicaid beneficiaries or  
268 any similar program for obtaining additional federal funding. If the  
269 payments qualify for federal financial participation or additional  
270 federal funding as part of any such program, the department of social  
271 services may determine other medically necessary services or  
272 equipment in addition to outpatient physician, outpatient pharmacy,  
273 and outpatient ancillary services that will be covered in order to  
274 optimize the use of the additional federal funds and may authorize the



275 health care access cards to be used to pay for such items. Any  
276 application for waiver of federal Medicaid standards that is filed to  
277 implement this subsection and that relies solely on the moneys  
278 generated by this section for the state share of any payments to be  
279 made under the waiver shall be exempt from the standards of  
280 subsection 5 of section 208.151, RSMo. On or before January 1 of each  
281 year, the department of social services may submit a written report to  
282 the governor and the general assembly describing the state legislative  
283 changes, if any, that are needed to qualify payments under this  
284 subsection for federal financial participation or additional federal  
285 funding. Notwithstanding any other provision of this subsection, if any  
286 of the payments described by this subsection do not qualify for federal  
287 financial participation or additional federal funding at any time, the  
288 payments of the state moneys in the Chronic Disease Management  
289 Account shall still be made pursuant to this subsection. An individual  
290 who receives health care coverage solely pursuant to this subsection  
291 shall still qualify as an uninsured Missourian for the purpose of this  
292 subsection.

293       9. (1) None of the funds allocated to the accounts in subsections  
294 7 and 8 of this section may be expended to directly or indirectly  
295 subsidize abortion services or administrative expenses. Abortion  
296 services include performing, assisting with, or directly referring for  
297 abortions, or encouraging or counseling patients to have  
298 abortions. Nondirective counseling is defined as providing patients  
299 with a list of health care and social service providers that provide  
300 pregnancy, prenatal, delivery, infant care, foster care, adoption,  
301 alternative to abortion and abortion services and nondirective, non-  
302 marketing information in regard to such providers. Such list may  
303 categorize the providers by the service or services they provide. An  
304 organization that receives these funds may not directly refer patients  
305 who seek abortion services to any organization that provides abortion  
306 services, including its own independent affiliate. Nondirective  
307 counseling relating to pregnancy may be provided. None of these funds  
308 may be paid or granted to an organization or an affiliate of an  
309 organization that provides abortion services. An organization that  
310 receives these funds may not display or distribute marketing materials  
311 about abortion services to patients. An otherwise qualified

312 organization shall not be disqualified from receipt of these funds  
313 because of its affiliation with an organization that provides abortion  
314 services, provided that the affiliated organization that provides  
315 abortion services is independent as determined by the conditions set  
316 forth in this section. To ensure that the state does not lend its  
317 imprimatur to abortion services, and to ensure that an organization  
318 that provides abortion services does not receive a direct or indirect  
319 economic or marketing benefit from these funds, an organization that  
320 receives these funds and its independent affiliate that provides  
321 abortion services may not share any of the following:

- 322 (a) The same or similar name;
- 323 (b) Medical or non-medical facilities, including but not limited  
324 to business offices, treatment, consultation, examination, and waiting  
325 rooms;
- 326 (c) Expenses;
- 327 (d) Employee wages or salaries; or
- 328 (e) Equipment or supplies, including but not limited to  
329 computers, telephone systems, telecommunications equipment and office  
330 supplies.

331 (2) An independent affiliate that provides abortion services must  
332 be separately incorporated from any organization that receives these  
333 funds. An organization that receives these funds must maintain  
334 financial records that demonstrate strict compliance with this section  
335 and that demonstrate that its independent affiliate that provides  
336 abortion services receives no direct or indirect economic or marketing  
337 benefit from these funds. An independent audit shall be conducted at  
338 least once every three years to ensure compliance with this section. If  
339 the organization is an affiliate of an organization which provides  
340 abortion services, the independent audit shall be conducted at least  
341 annually. The audit shall be conducted by either an independent  
342 auditing firm retained by the department of health and senior services  
343 or by an independent auditing firm approved by the department and  
344 retained by an organization receiving these funds. Any organization  
345 receiving federal funds pursuant to Title X of the federal Public Health  
346 Services Act may perform services which are required under the  
347 federal act, but otherwise prohibited pursuant to this section if:

- 348 (a) Specifically directed by United States Secretary of Health

349 and Human Services to perform such services by written order directed  
350 to the organization; and

351 (b) Such order is final and no longer subject to appeal; and

352 (c) The refusal to perform such required services will result in  
353 the withholding of federal funds to said organization. Federal statutory  
354 or regulatory provisions or guidelines of general application shall not  
355 constitute such written order as described herein.

356 10. The state auditor shall perform an annual audit of the funds  
357 and programs established pursuant to this section, which shall include  
358 an evaluation of whether pre-existing funding for programs or  
359 initiatives has been reduced because of the new funding for such  
360 purposes provided through the Healthy Future Trust Fund or any of its  
361 accounts. Such audit shall be performed on a fiscal year basis. The  
362 state auditor shall make copies of each audit available to the  
363 public. Every three years the state auditor shall prepare a  
364 comprehensive report assessing the work and progress of the programs  
365 established pursuant to this section. Such assessment report shall  
366 analyze the impact of the programs, grants, and contracts performed,  
367 shall be provided to the governor and the general assembly, and shall  
368 be available to the public.

369 11. Except as otherwise provided in this section, the effective  
370 date of this amendment shall be January 1, 2007. The tax imposed by  
371 this section on cigarettes and other tobacco products shall be imposed  
372 on all cigarettes and other tobacco products in the possession or under  
373 the control of any dealer or distributor on and after 12:01 a.m. on  
374 January 1, 2007, as determined by department of revenue rule. The  
375 initiatives and programs described in subsections 7 and 8 of this  
376 section shall be implemented as soon as reasonably practicable, but at  
377 least by July 1, 2007. All laws inconsistent with this amendment shall  
378 no longer remain in full force and effect after the effective date of this  
379 section.

380 12. The additional revenue provided by this section shall not be  
381 part of the "total state revenue" within the meaning of sections 17 and  
382 18 of article X of this constitution. The expenditure of this additional  
383 revenue shall not be an "expense of state government" under section 20  
384 of article X of this constitution.

385 13. The net proceeds from the tax imposed by this section shall

386 constitute new and additional funding for the initiatives and programs  
387 described in this section and shall not be used to replace existing  
388 funding as of July 1, 2006, for the same or similar initiatives and  
389 programs. The state shall not reduce the level of funding that was in  
390 effect on July 1, 2006, for initiatives and programs the same as or  
391 similar to those programs and initiatives described in this section  
392 because of the new funding provided for such purposes through the  
393 Healthy Future Trust Fund or any of its accounts.

394 14. All of the provisions of this section shall be self-  
395 enforcing. All of the provisions of this section are severable. If any  
396 provision of this section is found by a court of competent jurisdiction  
397 to be unconstitutional or unconstitutionally enacted, the remaining  
398 provisions of this section shall be and remain valid.

399 15. Beginning at the general election in 2012 and every six years  
400 thereafter, the issue of whether to continue to impose the tobacco tax  
401 described in this section shall be resubmitted to the voters. If a  
402 majority of the voters fail to reapprove such tobacco tax, the tobacco  
403 tax shall terminate on December 31, next following the election.

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